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| 21917 | 7590 | 07/15/2005 | | |
| MCHALE & SLAVIN, P.A. 2855 PGA BLVD PALM BEACH GARDENS, FL 33410 | | | EXAMINER NICOLAS, FREDERICK C | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3754 | |
| DATE MAILED: 07/15/2005 | | | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/828,392

Applicant(s)

MCKEE, KENNETH G.

Examiner

Frederick C. Nicolas

Art Unit

3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,6-8 and 11-28 is/are pending in the application.
- 4a) Of the above claim(s) 13-15 and 23-25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,6-8, 11, 12, 16-22 and 26-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1,6-8 and 11-28 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Species A: Figures 1-4, claims 1,6-8,11-12,16 and 27 in the reply filed on 3/17/2005 and 5/5/2005 is acknowledged. Further, claims 17-22,26 and 28 have been added to the applicant's election since the noted claims read on the elected Species A. Claims 23-25 have been withdrawn from consideration and added to the nonelected invention, since the noted claims are directed to a nonelected Species. The traversal is on the ground(s) that there is no serious burden to be imposed on the Examiner and the application should be prosecuted. This is not found persuasive because the four species of claimed invention are clearly not related in terms of their modes of operation. For example, in the elected species of Figures 1-4, the sealing cap includes at least one integrally formed sealing ring, on the other hand, in the species of Figure 9, the sealing cap comprises a metal ring. Clearly, there exist unrelated features among the species of claimed invention, which will require a separate search area for each species and thus, impose a burden in search and examination for the Examiner. The requirement is still deemed proper and is therefore made FINAL.

2. Claims 13-15,23-25 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 3/17/2005 and 5/5/2005.

Claim Rejections - 35 USC § 112

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3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1,6-8,11,12,16-22,26-28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

I- Claim 27 recites the limitation "said caulking tube tip and said caulking tube" in lines 9-10. There is insufficient antecedent basis for this limitation in the claim.

II- As to claim 27, the claimed limitation "a body member" as recited in line 3, and "a body member" as recited in claim 1, line 3, are vague and unclear because it is not clear if the claimed limitation in claim 1, line 3, "a body member" is the same as the claimed limitation noted in claim 27 above. Applicant should restructure the claimed language to prevent double inclusion throughout the claims.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1,6, 16-18,26-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Bostelman 5,295,601.

Bostelman discloses a sealing cap (10) for a caulking tube nozzle (22) which comprises a body member as seen in Figure 3, the body member including a solid top

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portion having a depending annular wall forming an inner cavity (28), a caulking tube tip engagement means and at least one sealing means as seen in Figure 4, wherein the engagement means cooperates with the caulking tube tip to provide compressive engagement between the at least one sealing means and the caulking tube tip thereby preventing air from entering the caulking tube (col. 4, ll. 1-15).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 7-8, 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bostelman 5,295,601 in view of McIntosh 4,307,821.

Bostelman has taught all the features of the claimed invention except that the outer surface includes a gripping means constructed and arranged to provide gripping for rotational engagement between the caulking tube tip and the sealing cap. McIntosh teaches the use of cap (30) having a gripping means (40) on the outer surface.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize McIntosh's teaching onto Bostelman's cap outer surface by providing a knurled external finish as taught by McIntosh in (col. 3, ll. 6-8), in order to facilitate gripping and rotation of the cap by the user.

9. Claims 11-12, 21-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bostelman 5,295,601 in view of Ray 5,248,071.

Bostelman has taught all the features of the claimed invention except that the sealing cap includes at least one integrally formed sealing ring. Ray teaches the use of a caulking tube sealing cap (100), where the sealing cap includes at least one integrally formed sealing ring (111,113) (col. 4, ll. 40-51).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Bostelman's inner cavity by providing Ray's annular sealing ring (111,113) within Bostelman's inner cavity, as taught by Ray in (col. 4, ll. 29-68 onto col. 5, ll. 1-39), in order to provide a cap with an annular ring surface to assure an airtight connection.

Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frederick C. Nicolas whose telephone number is (571)-272-4931. The examiner can normally be reached on Monday – Friday from 9:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Y. Mar, can be reached on 571-272-4906. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

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you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

FN
July 12, 2005



Frederick C. Nicolas
Primary Examiner
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7/12/05